

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON AGRICULTURE

Call to Order: By **CHAIRMAN DONALD L. HEDGES**, on January 16, 2001
at 3:32 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Donald L. Hedges, Chairman (R)
Rep. Linda Holden, Vice Chairman (R)
Rep. Ralph Lenhart, Vice Chairman (D)
Rep. Darrel Adams (R)
Rep. Norma Bixby (D)
Rep. Gilda Clancy (R)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Christopher Harris (D)
Rep. Verdell Jackson (R)
Rep. Jim Keane (D)
Rep. Larry Lehman (R)
Rep. Holly Raser (D)
Rep. Clarice Schrupf (R)
Rep. Frank Smith (D)
Rep. Butch Waddill (R)
Rep. Karl Waitschies (R)
Rep. Merlin Wolery (R)

Members Excused: Rep. Rick Dale (R)

Members Absent: None.

Staff Present: Krista Lee Evans, Legislative Branch
Robyn Lund, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 246, 1/16/2001

HEARING ON HB 246

Sponsor: REPRESENTATIVE KEITH BALES

Proponents: John Bloomquist, Montana Stock Growers Association,
Vern Peterson, Counties of Montana
Bill Garrison, Montana Stock Growers Association
Tom Holland, Insurance agent
Bill Tash, SD 17
Brian Severin, MSGA
John Swanz, MSGA
John Musgrove, HD 91
Andy Zook, Rancher
Steve Barnard, Mt. Association of State Grazing
Districts
Leon LaSalle, Rancher
John Novotny
David Smith
Johnny Schultz
Jed Eugene
Nancy Schultz, Montana Cattle Women
Mike Meuli
Jim Higgenbarth
Sandy Woldstad
Allan Evans, Fergus Electric Coop.
Tucker Hughes
Liz Jones, Rancher
Lorna Karn, Montana Farm Bureau Federation
Myrlin Schatz
Patsy Glazer
Randy Smith
Phil Hill, Commissioner of Garfield County

Opponents: David Slovak, Attorney
Mary Murphy
Ron Dorvall
Wendy Lee
Kristi Blazer, Attorney
Al Smith, Montana Trial Lawyers
Roy Andes, Attorney

Opening Statement by Sponsor:***{Tape : 1; Side : A; Approx. Time Counter : 2.3}***

REPRESENTATIVE KEITH BALES, HD 1, stated that the reason for addressing HB 246 is the recent Montana supreme court decision which reversed some long standing precedence of the open range law and the relationship that it has between a livestock owner and motor vehicles on our roads and highways. The central question of it is: Does the livestock owner owe duty to the motorist in open range conditions and on our roads? There has been court precedence for many years that has been built upon that the livestock owner did not have a duty or liability to the motorist within the state or open range areas. The supreme court overruled that, and in essence stated that the open range law as written did not apply to the relationship between the livestock owner and a motorist, it only applied between the relationship between the livestock owner and land owner/livestock owner. In cases up until that point the supreme court had said that the open range law did apply. Previously the supreme court and the legislature had addressed the issue of the relationship between livestock owner and motorist in Title 60. The result of that was that they said on interstates and primary highways the livestock owner did owe some duty to the motorist. This was, however, overturned in the Steiner decision. The Supreme Court also overruled the Williams case, in which it was stated that the livestock owner did not have a duty to motorists in a herd district. In order to correct these things HB 246 was drafted. The first two sections of this bill say that in areas of open range and with in a herd district the livestock owner does not have a duty to the motorist, excluding those highways which the legislature has addressed. Section three addresses the liability issues. Section four is further definition. Section five is the codification instructions. Section six provides for an immediate effective date. This supreme court decision has caused much turmoil and concern.

Proponents' Testimony:***{Tape : 1; Side : A; Approx. Time Counter : 10.5}***

John Bloomquist, Attorney, Stock Grower's Association, also representing: **Montana Wool Growers, Montanan Water Resources Association, Montana Dairymen's Association, and Montana Chamber of Commerce**. He submitted written testimony dealing with the history of previous law and information on the Steiner case and the Williams case. **EXHIBIT (agh12a01)** He stated that the effect of HB 246 is to take the law to where it was before the Steiner decision. He stated that except as to those interstate highways

and state primary highways, where the legislature in Title 60 has established an obligation to keep livestock off the rights of way, prior to Steiner, on all the other roads there was no duty and no liability. He submitted a map that indicates where these roadways are. **EXHIBIT(aqh12a02)** This is what sections one and two of this bill are about. This bill is to re-establish the areas long thought to be where liability could occur and where it could not occur.

Vern Peterson, Fergus County Commissioner, Montana Association of Counties, stated that the losses of this bill would be far reaching and devastating to the livestock producers of Montana. It will also have negative impacts on local governments, and the traveling public. He points out that most county roads exist on easements, not owned by the public. The landowner owns the property that the road is on. If this bill does not pass all of these roads will have to be fenced, but he questions who would have to do that. In Fergus county there are 1800 miles of county road, estimates half is not fenced. With 900 miles of unfenced road to be fenced, that is 1800 miles of fence, \$10,000 per mile for a four wire, steel post, labor-included fence. This would be about \$18 million for Fergus county. He feels that this will lead to pressure to abandon roadways, this is where the public will lose. He urges a unanimous do pass.

{Tape : 1; Side : A; Approx. Time Counter : 23.2}

Bill Garrison, Montana Stock Growers, thinks that this Steiner decision, if it stays, will have a very adverse effect on the livestock industry in Montana through court costs, insurance costs and the ability to manage property cost effectively. There are hundreds of miles of county roads, many are in open range, if these roads have to be fence it would cost a great deal of money. If they are fenced it would have an adverse effect on how people can manage their range land, as far as livestock getting to water and things of that nature. He has two county roads going through his land; one has two water gaps in it. That is the only water that his livestock have and they have to cross the road to get to it. He also brought up the issue of forest service roads, two of which are on his property. He fears liability on these roads. There is currently an attorney general's decision on access to streams in Montana that addresses bridges on county roads, if it stays as is, that could be real meaningful for people to control their livestock to keep them off of the public access roads. He recommends passage of HB 246.

Tom Holland, Western States Insurance, submitted written testimony. **EXHIBIT(aqh12a03)**

Senator Bill Tash, SD 17, stated that his family has been livestock producers for 110 years. This law does overturn 100 years of precedent and it is a concern that does need legislative remedy such as HB 246. Urges support of the bill from the committee.

Brian Severin, Montana Stock Growers, operates two ranches. One ranch is in an open range district, one pasture has a public road going about four miles through his property to get to forest service land. All the grass is on one side of the road and all of the water is on the other. If he fences this road he can't operate because it would split the grass and the water with no way for livestock to get from one to the other. He would have to petition to close the road; the public would lose access to the forest service land. Second ranch is in a herd district, with two county roads passing through. Every pasture borders one of those two roads. He has no trouble there, except during hunting season. Hunters often leave the gate open or run through the fence, damaging it. This allows livestock on the road with out his knowledge. If he was sued, Mr. Severin believes he would win, but is concerned about the court costs that he may not be able to afford.

John Swaz, rancher, stated that he has about 15 miles of county roads that run through his ranches. In the past he has allowed all sportsmen access to his ranch at any time. With this ruling he would not be able to do so because of the possibility of sportsmen leaving gates open, leading to cattle getting to the road. He would have to consider closing his ranch to recreationists. He urges passage of HB 246.

Representative John Musgrove, HD 91, conveyed Hill County Commissioners' and Blaine County Commissioners' support of HB 246. He asks for a do pass.

Andy Zook, rancher, agrees with concerns brought forward by previous proponents and would like to add the concern of leasing grass from other landowners. He wonders if he will be liable for the landowner's negligence if his cattle get through a hole in the fence. He urges committee support.

Steve Barnard, Montana Association of State Grazing Districts, states that there are 26 grazing districts representing hundreds of thousands of acres of mixed ownership land. Many of the roads on these lands are not fenced. As a result of the supreme court ruling, the liability to the districts becomes a major burden which was not there before.

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Leon LaSelle, rancher, testified in favor of HB 246. He would like to add that from the environmental stand point, fences would create real disaster areas as far as no water, et cetera. It would cut off some of the key areas and that will add a lot of expense. Under use of areas can be particularly devastating as far as wildfires and the like. Another issue is that if the right of way does get fenced, who will maintain it. Right now the cattle are doing a real nice job of keeping the vegetation under control.

John Novotny, rancher, wanted to address the state's livestock, particularly the elk. Elk can cause continuous damage to fences. The state claims ownership of all the wildlife, is the state liable when the cattle are on the roads due to wildlife damage to the fences? In his experience, ranchers in a populated area are diligent about fence maintenance, but still run into the previous problems mentioned by other witnesses. If this doesn't pass it will be one more step to take out the agricultural community.

David Smith, shared that he has open range in several counties containing 25 miles of county road. He urges the committee to pass this bill unanimously.

Johnny Schultz, Montana Association of State Grazing Districts, submitted written testimony in support of this bill.

EXHIBIT (agh12a04)

Jed Eugene, rancher, feels that ranchers and farmers are honest quiet people that tend to keep to themselves. This, however, is a time when he feels it is necessary to stand up. There are many county roads on his property that he will be forced to petition for closure of these roads. He fears that this will, in return, give the quiet rancher and farmer a black eye with the public and the sportsmen.

{Tape : 1; Side : B; Approx. Time Counter : 6.2}

Nancy Schultz, Montana Cattle Women, submitted a letter from Carol Mosher, Chairman of MCW, **EXHIBIT (agh12a05)** and written testimony of her own. **EXHIBIT (agh12a06)**

Mike Meuli, rancher, stated that he runs on open range which has a lot of county roads and highways on it. In a one month period of time during the summer there were 14 holes cut into the fence by recreationists. For reasons like this he would have to close his ranch to the public and he fears that recreation would be very detrimentally effected if this bill does not pass.

Jim Hagenbarth, stated that as a private property owner he has an obligation to the public to allow them access to his ground. The supreme court ruling will make this more difficult. He also stated, in reference to fences being cut, et cetera, that his bulls fall in love too, and they will just run through the fence. He urges support from the committee on HB 246.

Sandy Woldstad, Harlowton Chamber of Commerce, brought up the negative effect on tourism if this bill does not pass. The two hotels in the town depend on the hunters. If there is no where to hunt there is no reason for them to come to her county.

Allan Evans, Fergus Electric Cooperative, stated that he was here representing 3355 members of the board in 14 counties. One of his concerns was for the natural resource policy of Montana and his feeling that this policy is off track. Economy problems, electric energy problems, and so on, can be tied back to problems in our natural resource arena. The Montana supreme court's action on this decision is an example of the assault on property rights, commodity interests, and agriculture in our state. He stated that those who he represents resent the attack on those in rural Montana. We need to re-entitle natural resource interests and begin to organize efforts to correct the policy problem. This bill would be a step in the right direction.

Tucker Hughes, rancher, is here to represent his family. He has a county road that passes through his ranch, with land deeded on both sides of the road. He is concerned that by not fencing he may not only be liable, but also negligent. He wonders if everything will have to be fenced immediately, and, if so, how is he going to manage his resources.

Liz Jones, Rafter Ranch, mentioned that she has had a call from her forest service ranger asking her to take a look at what will happen to her permits with this decision. There are roads that run through her forest service permit acreage that would require many miles of fences that would be detrimental to the recreationists, the wildlife and the ranch. She believes that it is another tool that the forest service will try to use to limit grazing permits. She urges the passage of HB 246.

Lorna Karn, Montana Farm Bureau Federation, urges for a do pass recommendation.

Myrlin Schatz, rancher, travels the state roads and says that the counties can't even afford to do their roads and have had to give them all back to the state. The railroad that runs through their property gave them the lumber and wire to put the fence up, and

he wonders if the state is going to do it for him if it has to be fenced.

Patsy Glaser hopes that the committee will pass the bill.

Randy Smith stated that one of his biggest concerns was the wildlife. Hunters have been known to wipe out hundreds of feet of fence all at once. He urges a do pass because it will be a great financial burden to the stock growers of Montana if this bill fails.

Phil Hill, Commissioner of Garfield County, recommends a do pass for this bill.

Opponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 19.2}

David Slovak, attorney, represented Mary Murphy, plaintiff in the Steiner case, before the supreme court. He stated that the supreme court went to great lengths in their decision. He told the story of Mary Murphy and her 1993 accident where she hit a 2000 pound bull in an accident that was ruled unavoidable. This occurred just outside of Billings in a heavily traveled area and was life threatening for her. Mary survived, but her face had to be totally reconstructed. Slovak stated that what is important about the supreme court action is that the court put back in place the law that was the common law in Montana for the last 150 years, Section 27-1-701 of the Montana Code Annotate. That provision provides that everyone in the state must act in a reasonable fashion based on the circumstances. What does that mean in a car and livestock collision, he asked. First you have to look at the circumstances, i.e. population, traffic, livestock owner's previous behavior. Each case needs to be considered as unique on its facts, and you need to consider whether or not the livestock owner's conduct was reasonable under the circumstances. Overall, livestock owners do a good job of fencing, both to protect the public and to protect the livestock. The vehicle/livestock collision issue is not a huge problem. HB 246 is so broad and so absolute in protecting the individuals that don't deserve protection, that it is at the expense of faultless victims. There needs to be a balance struck. HB 246 currently sends the wrong message by encouraging the livestock industry not to take stringent measures to fence. He reminds us that no cases have been tried under this law, and it would be before a jury of peers that would decide the fault. The motoring public and the livestock owners need to live together and something is needed to find the right balance, however, HB 246 is too strict.

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Mary Murphy, stated that she was involved in the livestock accident that was referenced by Mr. Slovak and wanted to share how that accident had changed her life. Although she has no recall of the accident, she was told that she hit a bull on the road. The bull came through the windshield and shattered her face. She woke up in the hospital, her face was completely swollen, she had a trach to help her breathe, she couldn't see. She said that her face felt like a bowl of Jello that was still setting and slopping back and forth. After weeks in the hospital followed by other surgeries, she still has a permanent scar on the retina, trouble hearing, and no sense of taste or smell. These are things that she will have to learn to live with.

Ron Dorvall, stated that he is opposed to this bill because it is too broad sweeping and let's irresponsible people off the hook. He told of his 18 year old daughter who was killed right outside of Dillon city limits. A drunk driver had hit and killed a horse and left it in the highway. His daughter collided with this horse and was killed in the accident. The owner of the horse had been notified several times in a three week period just prior to the collision that his horse was out. He would knowingly let his horse run loose for 24 to 48 hours at a time. He thinks that the idea that the supreme court was trying to address is the difference between responsible and irresponsible livestock owners. He thinks that this decision hasn't been tested in court, and he fears that this bill is too broad sweeping. He emphasized that the supreme court, he believes, was targeting the irresponsible livestock owner and that HB 246 would let them off the hook.

Wendy Lee, stated that she also was injured in a livestock collision. She referred to a fine line of responsibility of a livestock owner, and she also fears that HB 246 would let irresponsible people off of the hook. She closed by saying that a few sour grapes can ruin the whole bunch.

Kristi Blazer, attorney, said that she was representing a client involved on a cow collision that occurred half a mile outside of Helena. Her client suffered \$130,000 in medical damages. In order to try the case she has to prove negligence on the part of the livestock owner, for example, he left the gate open. All that the Steiner case does is create potential liability for livestock owners. It allows the jury to decide who is being the more reasonable person under the circumstances. As far as sweeping away a hundred years of precedence, she stated that this was incorrect. The turning point was the Bartsch case in 1967, only 33 years ago. The Steiner case put the law back to pre-

Bartsch. In closing she said that everyone needs to be responsible and that's all that the Steiner case hopes. We need to trust a jury.

Al Smith, Montana Trial Lawyers Association, started by handing out a letter from a trial lawyer, who is also a rancher.

EXHIBIT (agh12a07) The second document he passed out was a brochure titled Traffic Safety Problem Identification giving some statistics for different types of accidents. **EXHIBIT (agh12a08)** He also passed out copies of the statutes that go around this piece of legislation. **EXHIBIT (agh12a09) EXHIBIT (agh12a10)** He stated that the Mt. Trial Lawyers represent people who have been injured. The reason that they are here today is to try to represent the people who will be injured in a livestock collision. MTLA supports the idea that persons, businesses and government entities should be responsible and accountable for their actions or omissions. The problem with HB 246 is that it absolves livestock owners from all responsibility and accountability for their actions or omissions, and it protects both the responsible and the irresponsible livestock owners. The supreme court decision does not say that all livestock owners are now liable; it says that there has to be a balancing act of the rights and responsibilities of both the motorist and the livestock owner. We need to keep in mind that it will be a jury of peers who will decide if it was the motorist or the livestock owner who was negligent. He cites that Article 2 Section 16 of the constitution provides for courts to be open to every person and a speedy remedy for every injury of person, property or character. This includes the motorist, but HB 246 denies this to the motoring public. He asked if there was another way to provide the balance where livestock owners need some certainty that they won't be sued for everything that happens, but that the people who are injured have some options too. He said that HB 246 provides absolute immunity to livestock owners, but what is needed is a balance in the relationship of a motorist and a livestock owner.

{Tape : 2; Side : A; Approx. Time Counter : 24.5}

Roy Andes, attorney, asked for a copy of the Montana Law Review book be placed in the record, in which an article that he wrote dealing with open range issues in contained. **EXHIBIT (agh12a11)** He wanted to add a couple of points in reference to the open range laws. He stated that open range did begin as a custom, not a law. He said that the Steiner case both overturned precedent, and it also didn't overturn precedent. There was 35 years of precedent with the Bartsch decision, saying that there was immunity for rancher from injuries resulting from livestock. On

the other hand, prior to 1967, there were 15 decisions of the Montana supreme court that did a balancing test between the right of ranchers and the rights of other individuals. He also offered some observations of the bill. He felt that section three of the bill did everything that needed to be done, section one and two are redundant. Although others have said that HB 246 will return us to before the Steiner decision, that is not quite correct because the bill doesn't define the word livestock. He said that he found eight different places in the Montana Code where the word livestock was defined in different ways. This leaves room for interpretation that was not there before Steiner.

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 33}

REPRESENTATIVE GILDA CLANCY asked how one would address the cost of putting in fencing for the people in this industry. **Al Smith** said that the Montana supreme court opinion does not say that livestock owners have to put in any new fencing. The only time that they would have to put in fencing would be, if under the circumstances, it was reasonable to do so.

REPRESENTATIVE DAVE GALLIK asked that within a herd district it appears that there is absolute immunity for owners of ground and livestock, is that correct. **Rep. Bales** replied that that was correct. **REP. GALLIK** then asked, if you look at the Montana Code Annotate relating to herd districts, it appears that when someone's livestock gets loose within the herd district, the person responsible is subject to criminal charges and civil liability; why is there a double standard? **Rep. Bales** replied that the reason that is included is that they were trying to take this back as closely as possible to the history of what the cases that the legislature had acted on previous to the Steiner decision, for example the Bartsch and Williams cases. **REP. GALLIK** then asked the sponsor if he would agree that if this bill becomes law, we are going to have a situation where there could be liability in the herd district for any damage other than damage to an automobile. **Rep. Bales** said that he believed that the herd district laws were made to address problems between livestock owners. The main controlling factor on liability between livestock owners and motorists were the decisions of the Montana supreme court.

{Tape : 2; Side : B; Approx. Time Counter : 18.6}

REPRESENTATIVE HOLLY RASER asked about the herd district and open range differences and, before the Steiner decision, why were other roads considered to be open range even within a herd

district. **Roy Andes** said that it was his recollection that it was the Williams case that dealt with the herd district issue, and that in this case the court made very little distinction between the herd district liability and the other open range liability.

REPRESENTATIVE CHRISTOPHER HARRIS, asked if it would be possible for the state of Montana to buy insurance to cover all of the different liabilities and how much it would cost. **Mr. Holland** replied that the cost would depend on the size of the operation, each ranch would be on its own merits. He estimated that it would cost \$2500 to \$3,000 per year. **REP. HARRIS** asked if that was per ranch. **Mr. Holland** replied that that was per ranch for these types of liability claims. **REP. HARRIS** asked how many ranches there might be within the open range districts.

Mr. Holland said that the last he saw there were 23,425 ranches in Montana that are capable of running cattle, probably half are in open range.

REPRESENTATIVE VERDELL JACKSON asked for clarification of the rule of law for the Steiner case. **Mr. Slovak** replied that he thought that what Judge Nelson, in the Steiner case, said was that they were going to apply the same standard that they apply when someone sues a store owner, other motorist, et cetera. It was meant to be a simple straight forward standard that Montana has followed since about 1850, that is reasonable conduct under the circumstances. **REP. JACKSON** said that he was thinking that the standard was what a reasonably prudent person would do under the circumstances, and he thought that it was always there, you can't sign it away; it is his assumption that this law can not prevent someone being responsible for negligence. **Mr. Slovak** said that he was aware of other legislation where one segment of society was given greater protection as opposed to other members of society, for example, the skier safety responsibility act.

REP. JACKSON then asked why not raise the bar from negligence.

Mr. Slovak said that based on this rule you would have the same analysis to determine whether or not there was a viable claim. The plaintiff must show negligence. He said that there are two different definitions of open range within the Montana Code Annotate, one talks about all areas of the state, including highways; one is under the livestock containment rules that says that open range is those areas of the state where agriculture or livestock is a predominant factor in the local economy, and livestock generally roam unrestrained.

REPRESENTATIVE LINDA HOLDEN asked, in reference to Exhibit 8, how many more collisions with domestic animals there are in 1998 than in 1989. **Al Smith** replied that it was 23. **REP. HOLDEN** then asked for the number of collisions with wild animals in 1998

compared with in 1989. **Mr. Smith** replied 967 more. **REP. HOLDEN** then asked what protection do the Montana citizens have in a collision with wild animals and, considering that wild animals don't recognize the open range or herd districts, what recourse do citizens have if they strike a wild animal, for example a deer. **Mr. Smith** replied that wild animals are different because they are not owned or controlled by anybody. There is no protection, per se, that the state of Montana would not be liable for deer jumping out on the road. The other big difference is that hitting a deer that might weigh 200 pounds, compared to hitting a 2000 pound steer, would lead to a much less severe accident.

REPRESENTATIVE BUTCH WADDILL asked, in the Steiner case, was that on open range. **Mr. Slovak** replied that it happened in a herd district right outside of Billings. The district court judge determined that it was not open range because it was heavily fenced, then during the trial the judge decided that she could not make that determination herself and was going to submit it to the jury. **REP. WADDILL** then asked, looking at HB 246, it just pertains to open range and herd districts, so any time that was not the case and a bull got onto the road this bill would not apply, is that **Mr. Slovak's** interpretation. **Mr. Slovak** replied that that was one construction, but if you use the other definition of open range that is referenced in the bill, it talks about open range as including everything, including highways and roads, so that would lead to the entire state of Montana as being open range.

REPRESENTATIVE JIM KEANE asked if **Mr. Bloomquist** saw any way to alleviate the problem of the irresponsible rancher. **Mr. Bloomquist** said that different standards could be established, for example, willfulness or gross negligence. You could raise the bar from standard of ordinary negligence, which is a question of fact that would probably go to a jury, to willfulness or gross negligence. He thinks that there are other statutes that would deal with instances of someone intentionally causing harm with livestock, for example endangerment statutes. HB 246 talks about prior to Steiner and the status of the law, on certain roadways you could be negligent and liable; on other roadways, according to the case law and the body of law that existed prior to Steiner, there was no duty and no liability.

REPRESENTATIVE GILDA CLANCY said that she was concerned about the cost of fencing. She asked if it could be required for land owners to fence open range land to avoid liability. **Rep. Bales** said that he didn't think that it would be a matter of forcing them. To avoid the possibility of higher insurance rates, conflicts and suits, to avoid the unknown, it may be more

advantageous to try to fence it. The other thing that he can see is that many of the county roads are on easements, the land owner owns the land on which the county road is located, he is not certain how that would turn out as far as fencing. He said that it is not a requirement to fence, but that it would certainly be one of the reactions.

REPRESENTATIVE HOLLY RASER asked if the sponsor would consider redefining the herd district portion of the bill because she was concerned that the urban interface could be termed open range and that is probably where the problems will be occurring. **Rep.**

Bales replied that he thinks the supreme court has totally opened the door and what he is trying to do is to close this gaping door before a whole lot wanders through. However, he doesn't think that that would preclude the legislature from looking at additional legislation to look at different situations. He said that in the essence of time and the criticalness of this decision on how livestock operators will work, that we need to pass HB 246 to take us back to where we were and then address other issues in subsequent legislation. **REP. RASER** then said that it seemed as if it were two open doors, the open range door and the urban interface door. **Rep. Bales** replied that it is not, because the supreme court decisions up to this point had said that, even where there were herd districts, the roadways were considered open range. He doesn't think that this bill is the place to address those concerns.

REPRESENTATIVE KARL WAITSCHIES asked if Rep. Bales could explain how you get a herd law and what the purpose is. **Rep. Bales** replied that the landowners in an area have to petition 55 percent of the people in the area to establish a herd law. In a herd district situation you have to fence livestock in.

REP. WAITSCHIES asked if it had anything to do with urban versus rural. **Rep. Bales** said no.

REP. RASER asked for some background into why the herd districts came after open range and why were they implemented. **Krista Lee Evans** stated that they were first enacted in 1917, and if the committee wanted the information she could research it further.

REPRESENTATIVE KATHLEEN GALVIN-HALCRO asked the previous question of John Bloomquist. **Mr. Bloomquist** replied that open range was basically a modification of custom and tradition. The open range doctrine established fence livestock out if you want prevent accidental trespass. Open range deals with the land owner to land owner relationship. Herd districts are a legislative reaction that modified that doctrine. Essentially the legislature said that when a certain percentage of land owners in an area petition, and the county commissioners adopt a herd district and mark the boundaries, within that area you have to

fence your livestock in; it is no longer your neighbors' responsibility to fence them out.

REP. RASER asked the same question of Mr. Andes. **Mr. Andes** agreed with what Mr. Bloomquist had said. He added that 1917 was the era of farmer/rancher conflict was growing. The farmers wanted to get rid of livestock who happened to be grazing their crops.

REP. WAITSCHIES asked for a definition of adequately fenced. **Mr. Slovak** replied that in some situations no fence at all would be required. It is a jury question, a factual question based on what is reasonable under the circumstances. No one is suggesting, and the Steiner decision does not say that all open range has to be fenced. He stated that it would be reasonable under the circumstances, which is the same standard that the legal system has used for the last 150 years in a variety of settings. **REP. HEDGES** commented that legal fences are defined in 81-4-101 MCA. **Mr. Slovak** said that the Steiner decision said that the legal fence will not be used for a negligence per se claim. He again referred to reasonable under the circumstances, which we must allow a jury to decide.

Closing by Sponsor:

REP. BALES said that, as he views this, the supreme court in their decision overturned considerable case history that said that there was no duty owed by the livestock operator, except when the legislature specified that there was a duty. The supreme court has opened it up and wiped away all legal history on this issue. He said that the legislature needs to do something, and do it soon, or we will be inundated with court cases to try to find out where we are at legally. The only way that negligence can be decided is by a trial by jury, and even though it may be a favorable jury, there are going to be several cases appealed to the supreme court. After the Steiner decision we are left with a vague, undeterminable situation on the relationship. There is no court history or legislative history. HB 246 will put back into effect what the court history was, 100 percent. He urges the committee to pass this bill.

ADJOURNMENT

Adjournment: 6:13 P.M.

REP. DONALD L. HEDGES, Chairman

ROBYN LUND, Secretary

DH/RL

EXHIBIT (agh12aad)